

## **TENTATIVE RULINGS for LAW and MOTION**

### **September 30, 2020**

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted on Yolo Court's Website, at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov). If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Ten (530) 406-6816  
Telephone number for the clerk in Department Nine (530) 406-6819

**NOTICE:** Effective May 4, 2020, all court appearances are by Zoom or Conference call. Yolo Superior Court Virtual Courtroom and conference call information is posted on the Yolo Court's Website at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov).

#### **TENTATIVE RULING**

**Case:** **Patterson v. County of Yolo**  
**Case No. CV PT 19-1799**

**Hearing Date:** **September 30, 2020** **Department Nine** **9:00 a.m.**

#### **Respondent County of Yolo's Request for Judicial Notice:**

The Court **GRANTS** respondent's unopposed request that the Court take judicial notice of the second amended verified petition for writ of mandate, tentative ruling of May 19, 2020, motion for protective order filed December 9, 2019, memorandum of points and authorities filed December 9, 2019, and responses to request for admissions filed December 9, 2019, as these documents are part of the Court's file in this case. (Evid. Code, §§ 452, subd. (d), 453.)

The Court **GRANTS** respondent's unopposed request that the Court take judicial notice of Ordinance No. 1509 as a regulatory and/or legislative enactment. (Evid. Code, §§ 452, subd. (b), 453.)

#### **Respondent County of Yolo's Special Demurrer**

Respondent County of Yolo's special demurrer to petitioners Votie Patterson's, Votie MM, Inc.'s, Marcia Foster's, Camp Green, Inc.'s, Kenneth Michael Evans', and MM Specialist Inc.'s second amended verified petition for writ of mandate is **OVERRULED**. (Code Civ. Proc., § 430.10, subds. (e) and (f).).

Respondent's special demurrer for insufficient verification is **OVERRULED**. Caselaw cited by respondent does not establish that pleading the fifth in response to discovery requests invalidates petitioners' verifications.

Respondent's special demurrer based upon governmental immunity is **OVERRULED** (Govt. Code, § 818.4.) Governmental immunity would not bar petitioners' non-monetary requests and may not bar petitioners' request for attorneys' fees. (Cal. Judges Benchbook Civ. Proc. Trial § 16.109; see also Code Civ. Proc., § 1021.5; *Nestande v. Watson* (2003) 111 Cal.App.4th 232.)

Respondent's special demurrer based upon the Code of Civil Procedure section 128.7, unsigned notices of appeal, is **OVERRULED**. Code of Civil Procedure section 128.7 applies to court proceedings. Respondents have cited no applicable authority that the notices of appeal in the county's administrative process must be signed.

Respondent's special demurrer for failure to exhaust administrative remedies is **OVERRULED**. One need not exhaust inadequate remedies in order to challenge their sufficiency. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 611. See, also, *Kirkpatrick v. City of Oceanside* (1991) 232 Cal.App.3d 267, 277–278 [futility].)

Respondent's special demurrers for uncertainty as to each cause of action in the second amended petition are **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (f).) Petitioners' causes of action are not uncertain, ambiguous or unintelligible.

#### **Respondent County of Yolo's General Demurrer:**

Respondent County of Yolo's general demurrer to petitioners Votie Patterson's, Votie MM, Inc.'s, Marcia Foster's, Camp Green, Inc.'s, Kenneth Michael Evans', and MM Specialist Inc.'s second amended verified petition for writ of mandate is **SUSTAINED IN PART**, only as to petitioners' fifth cause of action for spoliation of evidence. (Code Civ. Proc., § 430.10, subs. (e) and (f).)

Respondent's demurrer to petitioners' first and second causes of action are **OVERRULED**. Petitioners' allegations sufficiently state final administrative orders establishing jurisdiction for mandamus review. (Code Civ. Proc., § 1094.5; Code Civ. Proc., § 430.10, subd. (e).) Petitioners allege sufficient facts to state their first cause of action that respondents have wrongfully denied them a required hearing under the Yolo County Code. (Code Civ. Proc., § 1094.5; Yolo County Code §§ 5.20-11(A)(7)(g), 5-20.11(B)(3).) One need not exhaust inadequate remedies in order to challenge their sufficiency. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 611.) Petitioners allege sufficient facts to state their second cause of action that the Yolo County Code as amended is invalid. A writ of mandamus pursuant to Code of Civil Procedure section 1094.5 is the proper means for review of an adjudicatory decision which is alleged to be invalid because it is based upon an invalid regulation. (*Woods v. Superior Court* (1981) 28 Cal.3d 668, 674.)

Respondent's demurrer to petitioners' third and fourth causes of action are **OVERRULED**. Petitioners allege sufficient facts to state their third and fourth causes of action, that they were denied due process based upon respondent's failure to describe the location and nature of the violations. When a party petitions for a writ of administrative mandamus, and such review is not applicable, it is the court's duty to issue a traditional writ of mandate pursuant to Code of Civil Procedure section 1085, if warranted by the facts. (*Taylor v. State Personnel Bd.* (1980) 101 Cal.App.3d 498, 505.) Code of Civil Procedure section 1085 provides that a writ of mandate

may be issued to compel the performance of an act which the law specifically enjoins. (*Ibid.*) Petitioners have alleged in the third and fourth causes of action that respondents failed to perform an act enjoined by the law, to identify the location and nature of the violations. (Yolo County Code Section 5.20-11(A)(7)(b) and (c).)

Respondent's demurrer to petitioners' fifth cause of action is **SUSTAINED**. Petitioners' second amended petition for writ of mandate does not state any facts establishing that respondents intentionally destroyed evidence. (SAP, ¶ 78.) California does not recognize a tort claim for intentional spoliation or destruction of evidence by a third party who is not involved in a lawsuit in which evidence would be relevant. (*Temple Community Hospital v. Superior Court* (1999) 20 Cal.4th 464, 478.) There is no tort remedy for first party or third party negligent spoliation of evidence. (*Coprish v. Superior Court* (2000) 80 Cal.App.4th 1081, 1090. See, also, *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 4.) There is a reasonable possibility that the defect is correctable, and the Court will permit petitioners to amend their petition. (See *Franchise Tax Bd. v. Municipal Court* (1975) 45 C.A.3d 377, 384.)

### **Respondent County of Yolo's Motion to Strike**

Respondent's motion to strike is **DENIED**. (Code Civ. Proc., §§ 435, 436.) Respondents have not established that the challenged portions of the SAP are irrelevant, false or improper.

Petitioners may amend their petition no later than October 13, 2020 (within 10 days after the ruling). (Cal. Rules of Court, rule 3.1320(g).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.